UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re	Case Nos. 01-55472-JRG and 01-55473-JRG
CONDOR SYSTEMS, INC., a California corporation; and CEI SYSTEMS, INC., a Delaware corporation,	Chapter 11
Debtors. _____/	Jointly Administered for Administrative Purposes Only

ORDER ON CONTESTED FEE APPLICATIONS OF MURPHY, SHENEMAN, JULIAN & ROGERS

I. INTRODUCTION

Condor is part of the electronic warfare industry. It is a provider of technologically advanced signal collection and specialized electronic countermeasure products. In the past its sales have reached $80-100 million. Condor has been represented by the law firm of Murphy, Sheneman, Julian & Rogers (MSJR) since the time it filed its Chapter 11 petition on November 8, 2001.

There are two contested fee requests before the Court. By an order filed May 14, 2002, MSJR was awarded interim compensation in the amount of $486,839.75 together with reimbursement of expenses of $70,285.73. This application covered the period from November 29, 2001 through February 28, 2002. Subsequently MSJR submitted a second

application covering the period from March 1, 2002 through May 31, 2002. This application sought fees in the amount of $563,593.50 and reimbursement of expenses of $55,446.36. Thus, the fee request presently before the Court is $1,050,433.25.

Objections were filed by the Official Creditors' Committee and the United States Trustee. Hearings were held on these applications on April 24, 2002, August 14, 2002, and September 24, 2002, at which time the objections were argued.[1] Subsequently, recommendations were filed regarding the applications by the Committee and the United States Trustee.

II. FACTUAL BACKGROUND

To consider the objections, an understanding of Condor's financial problems, its debt structure and ownership is required. The Court begins with the ownership structure of Condor. The principal owners of Condor are DLJ Merchant Banking Partners II, LP and its affiliated partnerships (DLJ), and Behrman Capital II L.P. and Strategic Entrepreneur (Behrman).

A. Ownership And Control.

Four years prior to bankruptcy, in December 1998, Condor entered into a transaction with DLJ, Behrman and Global Technology Partners LLC (GTP) to recapitalize Condor through a merger. In connection with the recapitalization Condor issued $100 million of senior subordinated notes. These notes represent a substantial majority of Condor's present unsecured debt; debt which Condor's plan sought to eliminate in its entirety.

After the merger DLJ and Behrman held 82.4% of Condor's stock.

[1] The Court offered the parties an evidentiary hearing regarding the applications and objections. The offer was declined.

DLJ could not hold voting stock in Condor under Department of Defense regulations because it had certain foreign ownership interests. Therefore, in connection with the merger and recapitalization, in April 1999, Condor and all its post-merger shareholders entered into an Investors' Agreement which provided that the GTP members holding the largest block of voting stock were entitled to nominate three of the five Condor directors. The other two Condor directors were the chief executive officer and Behrman's nominee. The Investors' Agreement also provided that if at any time the holder of the Class C common stock, DLJ, owned the same number of shares of Class A common stock, the GTP members' right to nominate the three Condor directors became the right of DLJ.

Interestingly, under the Investors' Agreement the Board was not authorized to take significant actions without DLJ's prior written approval. Such actions included the sale or disposal of all or substantially all assets, entering into mergers, consolidations or reorganizations, encumbering or mortgaging assets other than for working capital, issuing or redeeming debt or equity securities, dissolving Condor, and certain changes to the salary and bonuses of senior management.

Following the merger, on May 20, 1999, Condor filed "Amendment No. 3" to its S-1 with the Securities and Exchange Commission. It stated that its voting structure changed according to the Investors' Agreement and "[t]hat the governance and voting rights were established to facilitate governance rights for DLJ since they cannot directly hold voting stock in Condor due to certain foreign ownership interests." It appears clear that Condor was controlled by DLJ and Behrman and perhaps principally by DLJ and its representative, Kirk

Wortman.[2]

B. Condor's Continuing Financial Decline.

According to the Creditors' Committee, at all times after the merger, Condor was insolvent and the financial condition of Condor steadily deteriorated. Within six months after recapitalizing, Condor was in financial difficulty.

A November 16, 1999 memo from Wortman outlined a number of adverse developments. Wortman concluded that they should attempt to sell the company. Condor would not meet its original 1999 or 2000 financial goals, it was struggling with software development issues and DLJ had reached the conclusion that the current CEO of the company needed to be replaced. Wortman also indicated Condor would not be covenant compliant with its lenders as of December 31, 1999, and the company's senior lenders were requesting a $12 million equity infusion.

According to the Committee, the financial situation of the company never improved. For fiscal 1999, operating income fell over 90% from $11.7 million to $1.0 million, and net income fell from $2.6 million to negative $13 million during the same period.

Less than a year after the recapitalization, on February 9, 2000, Condor entered into a subscription agreement with DLJ and Behrman for the purchase of $10 million of Series A1 Preferred Stock. This stock was purchased by DLJ and Behrman on a pro rata basis with their common stock holdings. According to the Debtors' First Amended Disclosure Statement, the proceeds from the sale of $10 million in preferred stock was used to pay down revolving credit obligations under a credit

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[2] See ORDER ON CONTESTED FEE APPLICATION OF NIGHTINGALE & ASSOCIATES filed concurrently with this order.

agreement with the company's lenders and to fund two acquisitions.

Eight months after the infusion of this $10 million, Condor was again in trouble. A December 4, 2000 e-mail from CEO and Director Kent Hutchinson to another board member stated that he would be speaking with Wortman about "cash flow problems." At the January 2001 Board Meeting, Hutchinson reported to the Board that "continued covenant compliance and operations requires an equity capital infusion." Hutchinson recommended $15 million in new equity be invested.

According to the Committee, although Board meetings were held virtually every month since early 1999, no Board meetings were held in March or April 2001. Without a meeting, on or about April 12, 2001, the Board approved the issuance of $10 million in senior discount notes (SDNs), funded by DLJ and Behrman. The SDNs purportedly resulted in the subordination of the $100 million in Discount Notes which had been issued in 1999.

On June 30, 2001, Condor's 10Q set forth:

Senior Secured Debt (Bank of America) (Plus Letter/Credit 31M)	18.9
Senior Discount Notes (DLJ & Behrman)	10.3
Subordinated Notes	100.0
Accounts Payable	8.8
Accrued Expenses	14.8
Customer Contract Advances	4.0
Total	156.8

Less than seven months after DLJ and Behrman infused $10 million and purportedly took a senior creditor position, Condor filed its Chapter 11 petition.

C. Condor's Chapter 11 Filing And Plan Of Reorganization.

Condor filed its Chapter 11 petition on November 8, 2001. With

the petition it filed a plan of reorganization and disclosure statement.

The plan was fairly simple in structure. The secured loans with Bank of America, the company's senior lender, would be restructured. Assuming this could be accomplished, there would be covenant compliance but no overall improvement in the financial condition of Condor. Trade creditors would be paid in full over two years following confirmation and customer obligations would be honored. These obligations approximated $12.8 million and were insignificant when compared to the company's total unsecured debt.

In Condor's view, the revitalization of the company must be achieved by the elimination of the $100 million Subordinated Notes issued in 1999 in connection with the recapitalization. Accomplishing this goal would immediately improve the liability side of Condor's balance sheet from $156.8 million to $56.8 million.

However, it was quite likely that the Subordinated Note holders would not consent to being wiped out. The ability to cram the plan down over their objection was therefore necessary. The absolute priority rule set forth in § 1129(b)(2)(B) of the Bankruptcy Code requires that after a cram down no holder of a junior interest can retain that interest.

To deal with the absolute priority rule problem, the plan provided that all of the stock of Condor would be cancelled. Cancellation of the stock would, of course, result in DLJ and Behrman losing their 82.4% interest in the company. To solve this problem the plan provided that the $10 million Senior Discount Notes held by DLJ and Behrman, issued just seven months before the filing, would also be cancelled. In return for the cancellation DLJ and Behrman would

receive 90% of the new stock. The holders of the $100 million Subordinated Notes would receive no new stock but would be given warrants which would allow them to purchase the remaining 10% of the new stock for $11 per share.

As the parties declined the offer of an evidentiary hearing regarding the underlying facts, the Court is left with the inferences that can be drawn from the facts presented. It is hard to ignore the obvious. If Condor's plan was confirmed, the practical result was that the company reduced its unsecured debt by over 75% and DLJ and Behrman increase their ownership position from 82.4% to 90%.

The keystone to this plan was Nightingale & Associates, Condor's financial advisor. According to the Committee, Nightingale was engaged by Condor on July 26, 2001, a little over three months before the filing. Among its responsibilities, and perhaps its principal responsibility, was valuing Condor. Prior to filing Nightingale concluded that the company had an internal reorganization value of $51.5 million as a stand-alone business, with a range of value from $45.9 million to $61.2 million.

The Nightingale valuation fit nicely into Condor's plan. With the bank debt, including the obligations on the letters of credit, approximating $49.9 million and payables and customer obligation totaling $12.8 million, there was simply no value left for the $100 million Subordinated Notes issued in 1999. For its three months of service prior to the filing Nightingale was paid $625,232.14.[3]

D. Creditors' Committee Response.

Given the structure of the plan, it is not surprising that the

[3] To the Court's knowledge no examination of these fees has been conducted by the Creditors' Committee.

Committee raised numerous objections to Condor's disclosure statement. It is also not surprising that the Committee launched an investigation into the company's slide into bankruptcy and the manner in which the plan of reorganization was developed.

Following its initial investigation, the Committee sought leave from the Court to pursue breach of fiduciary duty claims against the company's directors and controlling and dominate shareholders. The Court granted the Committee most of the authority it sought and these actions remain pending.[4]

E. The Sale Of Condor's Assets.

While hearings were progressing on Condor's Disclosure Statement, it was approached by EDO Acquisition IV, Inc. (EDO) regarding a possible sale of all of Condor's assets. Negotiations led to an agreement. On May 21, 2002, just over six months after the petition was filed, Condor filed its first papers in connection with the sale. The sale was subsequently approved and consummated.

III. OBJECTIONS TO THE APPLICATIONS

A. The United States Trustee's Objection.

The United States Trustee raised objections to two aspects of MSJR's work. The first category involves $65,790.50 spent on the motion filed by the Creditors' Committee seeking authority to bring a lawsuit against shareholders and directors of the corporation. The Debtor was not a party to the prospective lawsuit. The Trustee argues that MSJR, on behalf of the corporation, had no need to play such an active and expensive role in this dispute.

The Trustee's written recommendation states that only $10,000.00

[4] A settlement was reached with the DLJ parties with respect to these actions and was approved by the Court on October 2, 2003.

of the $65,790.50 should be allowed.

The second category of time addressed by the Trustee is that involving the Debtors' plan and disclosure statement. While hearings on the disclosure statement were proceeding, the Debtors received an offer to purchase all of their assets from EDO. The Trustee calculates that $104,369.00 was spent on the plan and disclosure statement from March through May 2002. MSJR explained this as a "dual-track" approach, pursue the sale on one track while continuing to pursue confirmation on another. The Trustee believes there was little merit to this approach. If the sale to EDO fell through, the Debtors could quickly finish the necessary changes to the disclosure statement and proceed with the plan.

The Trustee's recommendation indicates that $32,929.50 should be disallowed as it represents the approximate amount spent on the "dual-track" plan. The Trustee then went on to note:

> The Court also noted that Murphy, Sheneman prepared the plan and disclosure statement pre-petition and then spent more than $200,000 revising it post-petition which seems high. Murphy, Sheneman has noted that much of its time was spent responding to the Committee, which raises the question about whether the [D]ebtors' original plan and disclosure statement had any chance of being confirmed. While negotiations are common in a chapter 11 case, to the extent that the [D]ebtors and Murphy, Sheneman took unreasonable positions that cost the estate money by creating extra work, Murphy, Sheneman's compensation should be reduced. Because of its intimate involvement in the negotiations over the plan and disclosure statement, the U.S. Trustee defers to the Committee as to appropriate reduction on the plan and disclosure statement as a whole.

B. The Creditors' Committee's Objection.

The Committee's objections mirror those of the United States Trustee. The Committee believes the $65,790.50 spent in opposing the motion to sue directors and shareholders was excessive. In its written recommendation the Committee states similarly that only

$10,000.00 of the requested amount should be allowed. The Committee reasons that "[a]t a blended billing rate of $400 per hour ... MSJR could have spent 25 hours on this, which is more than sufficient time to craft and present the Debtors' position to the Court."

Similarly, the Committee objects to "in excess of $100,000" being spent on the plan and disclosure statement. The Committee argues that much of this effort was "to promote the position of the SDN/equity holders to the detriment of other creditors and contrary to the views expressed by the Committee concerning proper valuation, equitable treatment of creditors and other matters." The Committee concludes by pointing out that the sale to EDO was consummated and the Debtors' plan and disclosure statement were withdrawn.

The Committee recommends that $52,529.50 be denied which the Committee believes is 50% of the amount billed on the "dual-track" plan during the period of March 1 - May 31, 2002. The Committee appears to think the "dual-track" plan was a waste of time but is willing to assume that some of the work is salvageable for a liquidating plan that will ultimately be required.

IV. DISCUSSION

Section 330 of the Bankruptcy Code provides that a professional can receive "reasonable compensation for actual, necessary services rendered." 11 U.S.C. § 330(a)(1)(A). The Court has a duty to review each request and determine whether the requirements of the statute are met. In re Busy Beaver Bldg. Ctrs., Inc., 19 F.3d 833, 840-45 (3rd Cir. 1994); In re Berg, 268 B.R. 250, 257 (Bankr. D. Mont. 2001).

The first factor contained in Section 330(a) needs little explanation. "Actual services" are those services that were in fact rendered. In re Heck's Properties, Inc., 151 B.R. 739, 745-46 (S.D.

W. Va. 1992).

The second factor is not quite so obvious. "Necessary services" are those rendered in furtherance of duties imposed by the Code. Id. However, when deciding whether services are necessary, counsel must evaluate:

> 1. Whether the burden of the probable cost of the services is disproportionately large in relation to the size of the estate and the probable recovery;
>
> 2. The extent to which the estate will suffer if the services are not rendered; and
>
> 3. The likelihood of success and the extent to which the estate will benefit if the services are rendered.

Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc., 924 F.2d 955, 959 (9th Cir. 1991). Where some of the services provided were not likely to benefit the estate or were not necessary, the Court may award less compensation than requested. In re Riverside-Linden Inv. Co., 925 F.2d 320 (9th Cir. 1991)(court may decline to award attorneys' fees where the time expended cannot be justified by a cost-benefit analysis).

The third factor, "reasonableness," requires the Court to assess the value of the services rendered. This often requires the Court to take a step back from the professional's application and time records and assess the overall nature of the case and its problems. How much money should be spent is directly related to the nature of a particular problem, the Debtors' involvement in that problem, the extent to which the problem affects the reorganization effort and the extent to which the professional's work contributed to the resolution of the problem.

It is these latter two factors which the Committee and Trustee target in their objections to the money spent by MSJR in responding

to Committee's request for authority to sue directors and shareholders. In essence, they argue that the amount of work performed was neither necessary nor reasonable.

It must be noted that the potential defendants, directors and shareholders, were represented by their own experienced and extremely competent counsel. These attorneys were perfectly capable of opposing the motion and, in fact, gave the Court a great deal to consider before ruling. The Debtors' response added little to the arguments raised by counsel for the prospective defendants. While the Debtors were not a party to the proposed lawsuit, it appears from the time records that MSJR spent more money opposing the motion than the Committee's counsel did successfully prosecuting it. It is true that MSJR can present to the Court the effect the suit might have on the Debtors' operations. However, the amount of time spent here was not necessary and the amount requested is not reasonable.[5]

The question of the amount of money MSJR spent on the plan and disclosure statement is more difficult. As previously indicated, Condor filed its plan and disclosure statement with its petition. MSJR's retention application indicates that the firm billed Condor $299,414.08 prior to filing. The Court presumes that some portion, perhaps a substantial portion, of these fees are for the preparation

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[5] In preparing its request counsel must reexamine its services and exercise billing discretion. Counsel for the prevailing parties should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. "In the private sector, 'billing judgment' is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's *client* also are not properly billed to one's *adversary* pursuant to statutory authority."

Hensley v. Eckerhart, 461 U.S. 424, 434 (1983)(citation omitted).

of the plan and disclosure statement. MSJR's web site describes the firm's lead counsel as "among the top 25 turnaround and workout lawyers under age 40 in the United States." Given these two facts one would assume the plan and disclosure statement would come before the Court in a condition to be approved with little or no change.

Unfortunately, such was not the case. In the Court's view the original disclosure statement was difficult to follow and lacked essential information in many areas such as the nature of the financial problems that necessitated bankruptcy for Condor. The following is a sample of the Committee's objections to the disclosure statement, all of which have some degree of merit:

1. The Disclosure Statement fails to explain the basis on which the Debtors created five classes of unsecured creditors and provided disparate treatment for each class.

2. Although the Plan proposes to affect a complete subordination of the Subordinated Notes Claims to the Senior Discount Notes Claims, the Disclosure Statement incorrectly assumes that this is a proper application of the subordination provisions of the Subordinated Note Indenture, without any discussion of how this determination was made, who made the determination or of the existence of a dispute regarding those contractual rights.

3. The Disclosure Statement contains no reference to the Committee's determination that the Senior Discount Note Claims should be equitably subordinated to all other unsecured creditors' claims. The Disclosure Statement does not mention whether the Debtors considered whether such equitable subordination is appropriate.

4. The Disclosure Statement fails to make clear that the two intended holders of the New Common Stock of Reorganized Condor, DLJ and Behrman, are currently holders of more than 82% of the Common Stock of the Debtors.

5. The Disclosure Statement should make clear that DLJ, which owns nearly 53% of the Common Stock of Condor and is proposed to be the largest shareholder of reorganized Condor, has contractual rights with all other current shareholders which enables DLJ to preclude Condor from selling or disposing of all or substantially all of its assets; entering into mergers, consolidations or reorganizations (such as through the Bankruptcy Code); the encumbrance of assets other than for working capital; issuing or redemption of debt or equity securities; and certain salary and bonus changes for senior management, and therefore gives DLJ significant control over the Debtors' operations.

6. Although the Disclosure Statement identifies the treatment of trade debt as a "100%" recovery, it fails to indicate the present value of the proposed

distributions is only 80% assuming disputed Claims are promptly resolved. Similarly, the Disclosure Statement fails to explain why the Plan does not require the Debtors to file objections to claims until 120 days after the Effective Date, which can result in creditors not receiving payments for many more months, even years, later than indicated in the Disclosure Statement.

7. More than $30 million of the approximately $49 million of Bank Claims are contingent and relate to standby letters of credit ("LCs"), yet there is no meaningful discussion of these contingencies, including the limited likelihood of these contingent Claims becoming allowed Claims or why the Debtors consider them secured liquidated debt for purposes of valuing the stock to be distributed to DLJ and Behrman.

8. The Disclosure Statement fails to disclose that the Committee's financial advisors, CIBC World Markets Corp. ("CIBC"), have valued the enterprise value of the Debtors at $90-95 million, nearly double the valuation conclusion of the Debtors' financial advisors, and fails to include a summary of the methodology and analysis utilized by CBC in reaching its valuation conclusion.

9. The Disclosure Statement fails to indicate that if CIBC's low-end valuation conclusion of $90 million is correct, even if: (1) the Senior Discount Notes Claims were contractually senior to the Subordinated Note Claims; and (2) there is no basis on which the Senior Discount Note Claims should be equitably subordinated to all other unsecured claims, the Senior Discount Note Holders will be receiving as much as $71 million of value on their claims of approximately $10.6 million.

10. The Disclosure Statement's financial projections are out-of-date and inconsistent with more recent information supplied to Committee professionals. Moreover, they cannot be based on the actual terms of post-confirmation bank financing, because those terms have not been determined and are not disclosed.

11. The Disclosure Statement fails to indicate what investigation and consideration, if any, the Debtors undertook in determining that it was proper for their officers and directors to receive blanket releases.

12. The Disclosure Statement fails to indicate why it is only the Subordinated Note class of creditors that loses its proposed distribution and other benefits if the class rejects the Plan.

13. The Disclosure Statement contains no information regarding the contemplated terms of the reorganized companies' amended articles of incorporation and bylaws.

14. Though the Disclosure Statement identifies the possibility that DLJ or Behrman may be precluded by law from owning non-voting securities in Condor, the Disclosure Statement fails to explain the reasons why this might occur, how it could be resolved, or that DLJ was unable to own voting securities in Condor prepetition due to Department of Defense ("DOD") regulations.

15. The Disclosure Statement fails to make clear that some of the most critical information to a creditor's consideration of whether to vote to accept the Plan is not included in the Disclosure Statement and will not be available until ten days before the voting deadline when a "Plan Supplement" is filed with the Court.

16. The Disclosure Statement does not contain any reference to the Committee's determination to urge all unsecured creditors to vote to reject the Plan, in light of the Plan's disparate treatment of unsecured creditors, the Committee's determinations that the Claims of DLJ and Behrman should be equitably subordinated to the claims of all other unsecured creditors, those Claims are not contractually senior to the Subordinated Note Claims and CIBC's valuation conclusion is nearly double that of the Debtors' financial advisor.

The disclosure statement in its original form clearly could not be approved. Debtors amended the disclosure statement three time and it still was difficult to follow and fraught with problems. Ultimately, as the Committee pointed out in its objection, it has been dropped from the Court's calendar.

The manner in which MSJR chose to move the disclosure statement forward is as troubling as its lack of adequate information. The Debtors' financial advisor, Nightingale, valued the business at between $45-55 million. This valuation fit nicely into the plan's goal of eliminating $100 million of allegedly Subordinated Notes, through a cram down if necessary. However, the Committee engaged a financial advisor, CIBC World Markets Corporation (CIBC), and its opinion of Condor's reorganization value was $90-95 million.

Condor's plan was clearly not confirmable if CIBC's value was anywhere close to accurate. It therefore appeared to the Court that there was a possibility of wasting considerable time and money if the valuation issue was not resolved. The Court suggested that the Debtors and Committee consider a valuation hearing before proceeding further with the plan and disclosure statement. MSJR rejected the thought of resolving valuation at this juncture and moved forward attempting to somehow deal with the issue in its disclosure statement. This complicated the process and, of course, Condor had no alternative plan option if CIBC's value proved correct.

More troubling is MSJR's continued work on the disclosure statement even after EDO publicly announced it wanted to buy Condor's assets. During the time frame covered by the second interim application, while MSJR was billing $122,417.50 on the disclosure statement and plan it was also billing $179,715.50 on the EDO sale.[6] This was MSJR's dual- track approach, pursue the sale on one track and the plan on another. However, there were not really two tracks, there were three potential outcomes. In its dual-track approach MSJR ignored CIBC's valuation of $90-95 million. If correct, and the sale fell through, Condor's plan was doomed and MSJR would be back to the drawing board.

In the end this was all a waste. CIBC's valuation turned out to be close to accurate. In its motion to sell the assets to EDO, Condor stated that "the aggregate consideration payable by the Lead Bidder could total as much as $112 million." As the Eight Circuit Court of Appeals has pointed out:

> While it is not necessary to have a successful reorganization in order for debtors's counsel to be awarded fees, fees may be denied when counsel should have realized that reorganization was not feasible and therefore services in that effort did not benefit the estate.

In re Kohl, 95 F.3d 713, 714 (8th Cir. 1996). Condor's plan was doomed from the start and MSJR had early signs of the problems.

In attempting to address the deficiencies in the disclosure statement and in moving forward despite the CIBC valuation and EDO sale, MSJR billed $214,928.50 on the plan and disclosure statement

[6] The figures represent the total of billing categories R, R01, R02, R03, R04, R05 and R06 regarding the plan and disclosure statement, category J01, asset purchase agreement, and categories J03, J04, J05 and J06 regarding the EDO sale.

during the subject time periods.[7] This is in addition to what was paid prepetition with respect to a plan and disclosure statement that should have been acceptable when filed.

V. CONCLUSION

The Court finds that notice of the applications was sufficient and that all parties in interest have had a sufficient opportunity to be heard.

With respect to the objections to the amount billed in connection with the Committee's motion to pursue litigation, the objections of the United States Trustee and the Committee are sustained. The Court accepts their recommendation that only $10,000.00 be allowed. As a result the balance, $55,790.50, will be denied.

With respect to the plan and disclosure statement the United States Trustee focused on the March through May time frame and MSJR's "dual-track" approach. The Court agrees with the Trustee that there was no need to work on the disclosure statement once EDO was on the scene. The Trustee recommended a reduction of $32,929.50 believing that to be the approximate amount spent on the "dual-track" plan. However, the problems with MSJR's work on this aspect of the case went deeper. The Trustee recognized this but deferred to the Committee.

The Committee recognized that MSJR was paid for preparing the plan and disclosure statement pre-petition. The Committee recognized the that there was little value in going forward with a plan based on a valuation of $45-55 million and no real value in going forward after EDO was on the scene. However, in its recommendation the Committee

[7] This is the total of billing categories G01, R, R01, R02 and R03 in the First Interim Fee Application and categories G01, R, R01, R02, R03, R04, R05 and R06 in the Second Interim Fee Application.

only seeks to reduce the fees by $52,529.50, the amount it believes to be half the dual-track fees, because of the potential residual value of some of the work completed.

The Court does not concur with the residual value the Committee places on MSJR's work. A liquidating plan will be fairly simple. There appear to be remaining trade creditors who have not been paid by EDO, the $10 million Senior Discount Note holders and the $100 million Subordinated Note holders. There is no distribution to shareholders. The available funds will simply be paid out according to the provisions of the Bankruptcy Code. The disclosure statement is similarly straightforward. All parties in interest received notice of the sale of all the assets. These parties need only be advised that the sale has been concluded and the funds will be paid out as far as they go under the Bankruptcy Code.

Under all of the circumstances, and particularly in light of MSJR being paid pre-petition for what should have been an acceptable plan and disclosure statement, the Court believes a deeper discount is warranted. Little of MSJR's work in this area has value at this point. The Court will allow 20% of the $214,928.50 billed, $42,985.70, and the balance, $171,942.80, is denied.

The Court hereby approves the First and Second Interim Fee Applications of MSJR for the periods covered in the amount of $822,699.95 and reimbursement of expenses of $125,732.09.[8] The assets of the Debtors have been liquidated and funds are available to pay administrative expenses. Therefore, MSJR shall be paid these amounts

[8] At the hearing on these fee applications it was discussed that the Court approve these applications on a final basis. However since that time issues concerning the amount of fees incurred has been raised and as a result the Court declines to approve MSJR's fees on a final basis.

in full.

MSJR's application indicates that it holds a prepetition retainer in the amount of $260,273.09. These funds are to be applied to fees previously allowed whether on an interim or final basis. To the extent that funds remain after such application they shall be returned to the Debtors' responsible individual within 15 days. A letter setting forth the disposition of these funds shall also be sent to the responsible individual within 15 days with copies to counsel for the Creditors' Committee and the United States Trustee.

DATED: _____

_____
JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE

Case Nos. 01-55472-JRG
and 01-55473-JRG

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

I, the undersigned, a regularly appointed and qualified Judicial Assistant in the office of the Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San Jose, California hereby certify:

That I, in the performance of my duties as such Judicial Assistant, served a copy of the Court's **ORDER ON CONTESTED FEE APPLICATIONS OF NIGHTINGALE & ASSOCIATES** by depositing it in the United States Mail, First Class, postage prepaid, at San Jose, California on the date shown below, in a sealed envelope addressed as listed below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ at San Jose, California.

_____
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